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SUMMARY RECORD OF THE 1187th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 26 October 1992, at 10 a.m.

Chairman: Mr. POCAR

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GE.92-18106 (E)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Luxembourg (CCPR/C/57/Add.4)

1. At the invitation of the Chairman, Mr. Thorn, Mr. Duhr and Mr. Krieger (Luxembourg) took places at the Committee table.

2. Mr. THORN (Luxembourg), introducing the second periodic report of Luxembourg (CCPR/C/57/Add.4), said that, as President of the Council of State and of the Supreme Administrative Court, he had assisted personally in the elaboration and enforcement of much of the legislation discussed in the report and therefore hoped to be able to provide any additional information requested by members of the Committee. Luxembourg had also submitted a core document (HRI/CORE/1/Add.10), which gave details of the country's land and people, general political structure, economic, social and cultural features and the general legal framework within which human rights were protected, as well as information and publicity given to the Covenants and reports.

3. One preliminary comment he wished to make was that the Constitution of Luxembourg contained a series of provisions to protect the fundamental rights of Luxembourg citizens. However, account also had to be taken of the many foreigners in the country. In that regard, article 111 of the Constitution provided that all foreigners in the territory of the Grand Duchy enjoyed protection of person and property subject to the exceptions established by law. The extensive jurisprudence on the matter reflected the fact that foreigners enjoyed the same political rights as Luxembourg citizens. He would discuss aspects of political rights in his replies to the questions contained in the list of issues.

4. The CHAIRMAN invited the delegation of Luxembourg to reply to the questions contained in section I of the list of issues, which read:

> "I. Constitutional and legal framework within which the Covenant is implemented and non-discrimination and equality of the sexes (arts. 2 (1), 2 (2), 3 and 26)
>
> (a) Have there been any cases during the period under review where the provisions of the Covenant have been directly invoked before the courts or referred to in court decisions? If so, please provide details of such cases.
>
> (b) In the light of information contained in paragraph 40 of the report on measures taken to improve the participation of foreigners in communal life, please provide further details of the work being accomplished by the different communes' special consultative commissions and of the support they are receiving from the communal authorities."

5. Mr. THORN (Luxembourg) said that the Luxembourg delegation had prepared a series of written replies to the questions contained in the list of issues and invited Committee members to refer to them. The written reply to the question in section I, (a) - which stated that there was no known case in which the provisions of the Covenant had been directly invoked before the Luxembourg courts - was, however, incorrect. As President of the Council of State, he had heard several such cases. In one, concerning equality of the sexes, a woman had challenged the application of a regulation issued by the burgomaster of a particular commune which required women but not men to obtain permission to serve in a public house. He had decided to apply the provisions of the international human rights instruments and the litigation committee of the Council of State had subsequently annulled the regulation in question. The judicial authorities in all such cases held that the provisions of international instruments took precedence even over those of the Constitution, and therefore also over existing laws and regulations.

6. Referring to the question in section I (b) of the list of issues, he said that a variety of measures had been taken in the period since the submission of the initial report to improve the participation of foreigners in communal life. Their right to vote in communal elections was provided for in the Treaty of Maastricht signed by the Grand Duchy, and pending implementation of that Treaty the Council of State had already decided to accord foreigners the right to vote in professional organizations, chambers of commerce, and so on. The communes' special consultative commissions had been set up to deal with all problems relating to foreigners. The main difficulties were in the field of education, where coordination of the school system had been improved. Teachers were required to know more than one foreign language so as to provide for the needs of all children integrated within the Luxembourg school system. There were no problems in the field of housing, health and social services. In the field of culture, associations existed at various levels for all the nationalities represented in the Grand Duchy.

7. Mrs. HIGGINS welcomed the delegation of Luxembourg and commended the clear and well-drafted second periodic report, which had however been submitted somewhat late and tended to be confined to listing relevant legislation without placing it in the context of any problems it sought to address. She felt sure, nevertheless, that those shortcomings would be rectified in the course of the Committee's exchange of views with the high-level delegation representing the State party.

8. She was pleased to note the information provided by the representative of the State party concerning protection of the rights of aliens. However, on the question of the possibility of invoking the provisions of the Covenant directly before the courts, she wondered whether there was a recognition on the part of members of the Bar and citizens in general that the European human rights system, of which Luxembourg was a staunch part, did not contain such extensive provisions as those embodied in the Covenant on such issues as non-discrimination (art. 26) and the protection of minorities (art. 27).

9. She would also like to raise the question of the reservation made by Luxembourg under article 14 (5) of the Covenant, an issue that could also be addressed in the context of the right to a fair trial. It was not, of course, clear whether the Covenant required there to be an opportunity for further

appeal when a decision had been rendered directly by a higher tribunal in criminal matters, but perhaps consideration had been given since the submission of the initial report to the issue of whether a one-tier system of appeal to the Court of Cassation was entirely satisfactory from the human rights point of view.

10. With reference to paragraph 2 of the report, background information was unfortunately lacking on the Grand Ducal Regulation of 24 March 1989 concerning the administration and internal regime of prison establishments. She wondered what had prompted that admirable regulation. With regard to paragraph 3, concerning the Act of 1 September 1988 relating to the civil liability of the State and public bodies, she would like to know who would deem it inequitable to allow the consequences of a particular injury to be borne by the citizen. Lastly, she asked what was the status of the special commissioner apppointed to enforce decisions taken by the litigation committee of the Council of State and what powers were vested in him (para. 4 of the report).

11. Mr. SADI joined in extending a warm welcome to the delegation of Luxembourg, a country which had an exemplary record in the field of human rights. He agreed with Mrs. Higgins that the second periodic report contained too much information of an abstract nature and expressed the hope that the third periodic report would provide more details of actual practice. In that connection, it would be helpful for the Committee to know, for example, whether the strong legislation to promote equality of the sexes was supported by affirmative action to translate those provisions into reality, and also to have statistics on positions held by women in the private as well as the public sector.

12. He was grateful for the information on how the provisions of the Covenant could be invoked directly before the courts. However, he wondered whether there had been any instance of a national law being repealed following a court ruling that it was incompatible with the provisions of the Covenant.

13. Lastly, he too welcomed the assurances given by the representative of the State party concerning protection of the rights of foreigners, but would like to know whether "foreigners" meant immigrants or non-citizens in general, including asylum-seekers or even tourists.

14. Mr. FODOR cordially welcomed the Luxembourg delegation and expressed his appreciation for the well-drafted, if tardy, second periodic report, which, together with the core document (HRI/CORE/1/Add.10) and the initial report submitted seven years earlier, gave a detailed account of legislation relevant to implementation of the Covenant. He would, however, have liked to see more information about judicial practice in that regard and was disappointed by the laconic references to protection by the Constitution of the rights codified in articles 11, 12, 15, 16, 18-21 and 27 of the Covenant.

15. In the course of the exchange of views with the Committee, it would be helpful if the delegation of Luxembourg could identify any changes made to the country's legislation as a result of consideration of the initial report. It could perhaps also give its views on why so few communications concerning Luxembourg had been received under the Optional Protocol in the 10 years since

Luxembourg had become a party to that instrument. Did that apparently encouraging sign mean that individuals were satisfied with the administration of justice in the country, or could it be that they preferred to appeal to the European Court of Human Rights rather than to the Human Rights Committee?

16. With reference to paragraph 2 of the report, which underscored the importance attached to the principle of equality and non-discrimination, he would appreciate some clarification as to how the recent laws were being applied in order to protect small and lesser-known religious minorities. Lastly, with regard to the Act of 1 September 1988 relating to the civil liability of the State and public bodies (para. 3 of the report), he asked what procedure had been established for the presentation of compensation claims, whether issues of liability and compensation were dealt with in the same proceedings, and whether damage could include moral injury or whether the term was limited to a narrower interpretation.

17. Mr. WENNERGREN welcomed the delegation of Luxembourg and expressed his appreciation for the very useful second periodic report as well as for the highly instructive core document, which provided a wealth of information on the Grand Duchy. He regretted, however, that very little was said about administrative law. Paragraph 4 of the report referred only briefly to the Council of State and it would be interesting to know whether it was possible to appeal from the decision of an administrative body to the Council and how many cases it handled each year.

18. Furthermore, no information was given concerning military courts. He would like to know whether appeals could be made against decisions of those courts and, if so, which body would be competent to hear such appeals.

19. Mr. SERRANO CALDERA, noting that the Covenant was regarded as part of Luxembourg legislation, asked how contradictions between the provisions of ordinary law and those of the Covenant were resolved.

20. With regard to the Constitution, it was not clear whether a person could invoke the Constitution or merely the ordinary law where a legal provision affected his fundamental rights.

21. He requested further details concerning the primacy of the Covenant over national legislation and asked whether the Covenant could be invoked in an ordinary trial involving the constitutionality of a law affecting the Covenant.

22. Mr. ANDO, referring to paragraph 1 of the report, in which it was stated that the Constitution of Luxembourg had recently been amended, asked whether that amendment affected the application of the Covenant in Luxembourg.

23. With regard to paragraph 2, in which reference was made to the Grand Ducal Regulation of 24 March 1989 aimed at ensuring respect for the religious beliefs and moral principles of the group to which a detainee belonged, he asked why that provision had been necessary. He imagined that some problems might have arisen and asked what effect that new regulation had had in rectifying the former situation.

24. Under article 2 (3) (a), of the Act of 1 September 1988, the State and public bodies were responsible for any damage caused by an error of their services, unless the injury was attributable to a fault of the victim. In that regard, he said that in his country, Japan, if the Government allowed a medical firm to produce and sell medicine which might have harmful effects on users, the State could be sued for allowing the production and sale of that product. He would welcome some examples of the practical application in Luxembourg of the provision in question.

25. Mr LALLAH noted that paragraphs 2, 3 and 29 of the report referred to important amendments made to Luxembourg law in order to improve compliance with the requirements of the Covenant. He would like to know whether the amendments were actually a response to certain problems or whether they were merely a technical exercise designed to bring Luxembourg legislation more into line with the Covenant. The reply to that question would enable the Committee to have a better idea of any difficulties Luxembourg might have encountered and of steps taken to implement the Covenant.

26. He would like to know whether decisions taken by the Committee under the Optional Protocol were known in Luxembourg, in particular among members of the legal profession, the judiciary, government officials etc.

27. With regard to paragraph 35 of the report, he asked whether the ministers remunerated by the State belonged to a particular religion. In that connection, he referred to the provisions of article 27 of the Covenant.

28. Referring to paragraph 3 of the report, he drew attention to the fact that the English text said "provided the injury is specific", while the French text, which was the original, stated "à condition que le dommage soit spécial". He would welcome clarification concerning the nature of the injury involved.

29. Mr. MÜLLERSON said that it would be helpful to know how articles 24 and 27 of the Covenant were implemented in Luxembourg. He also asked whether Luxembourg had encountered any difficulties in implementing civil and political rights in the country. He thought that some problems might have arisen given that certain laws had been amended in Luxembourg.

30. With regard to paragraph 39 of the report, he would welcome more information on those persons whose right to take part in elections was restricted and on what offences could result in a person being deprived of the right to vote. The representative of Luxembourg had said that foreigners had the same voting rights as citizens with regard to communal elections. However, there were certainly differences between the status of citizens and that of foreigners. He would like to know whether ministers of all religions were treated equally with regard to remuneration by the State.

31. Mr. PRADO VALLEJO said that Luxembourg had an excellent human rights record and he was gratified to learn that its legislation guaranteed the implementation of the provisions of the Covenant.

32. However, the report before the Committee did not state whether any difficulties had been met with regard to the implementation of the Covenant.

There were always problems of some kind, and he therefore asked the delegation to provide information in that regard.

33. Referring to paragraph 35 of the report, he noted that ministers of religion were remunerated by the State and treated as State officials. In that connection, he would also welcome information concerning conscientious objectors.

34. Lastly, with respect to the first sentence of paragraph 83 of the core document (HRI/CORE/1/Add.10), which stated that "it is an established supereminent principle that international law has priority over national law, in other words, international treaties take precedence over laws and all other provisions of natural law", he asked whether the Covenant took precedence over the Luxembourg Constitution.

35. Mr. THORN (Luxembourg) thanked the members of the Committee for the kind words they had addressed to his delegation.

36. With regard to the question raised concerning the Council of State, he said that it was an institution which had several tasks. The first was that of supreme jurisdiction regarding administrative questions. Secondly, it had a consultative function in legislative matters. No law could be adopted in the Grand Duchy without the intervention of the Council of State, which had to give its views on any bills submitted to the Chamber of Deputies. Therefore, it always examined the conformity of Luxembourg law with the various human rights instruments, including the Covenant, because those documents took precedence over national law.

37. He wished to inform the Committee that laws had been adopted in Luxembourg on the rights of the child, the residence and employment of foreigners in Luxembourg, legal assistance and applications for asylum. His delegation would provide more detailed information on those laws at a later stage. In that connection, he agreed that the report of Luxembourg might have been more specific.

38. With regard to the question whether Luxembourg's citizens were aware of the rights contained in the Covenant, he said that that was unfortunately not the case. Even lawyers who could invoke human rights instruments in legal proceedings and draw attention to the question of conformity of national legislation with such instruments did not do so because they were unfamiliar with the international conventions. As to the judiciary, it was not even aware of decisions and decrees of the Luxembourg Council of State. He would make the necessary recommendations to his authorities on that point.

39. With regard to the question of which body was concerned with the granting of compensation for injury caused by public bodies, it was first necessary to distinguish between government departments in general and the prison administration in particular. Any injury caused by a government department was the subject of proceedings before the Council of State, which determined whether the contested action had been justified. If the Council of State found that the department had infringed the law, it referred the case to an ordinary court, which then fixed the amount of compensation. With regard to the prison administration, a person who had been detained without

justification was entitled to compensation, which was fixed by a commission. Where the beneficiary disagreed with the amount awarded, he had the right to appeal to an ordinary court.

40. In response to Mrs. Higgins' question on the status and powers of the special commissioner mentioned in paragraph 4 of the report, he said the Commissioner's role was to enforce decisions that other administrative authorities declined to implement, and for that purpose, his powers were unlimited.

41. On the question as to whether the Covenant had precedence over domestic legislation, he said that all international instruments had absolute priority over all domestic legislation, including the Constitution and the regulations designed to put the laws into effect. Where domestic legislation was not in line with international instruments, the courts had the authority to declare the provisions in question illegal in relation to a specific case brought by a given claimant. The legislation itself was not declared illegal, however. As for the general question of monitoring legislation to see if it was in accordance with the Constitution or with international instruments, he said there was currently no provision for such monitoring, and it had been recognized that that represented a serious gap in the country's legal system.

42. In response to the question on the definition of a foreigner as the term was used in article 111 of the Constitution, he said it covered a number of cases. Citizens of members of the European Community, of European countries not members of the European Community and of non-European countries were all defined as foreigners. All foreigners had the same rights as did citizens of Luxembourg, and no distinctions were made on the basis of race or any other consideration. The foreign population was very large, constituting one third of the country's total population.

43. Mr. Fodor had asked whether any legislative changes had gone into effect since the initial report had been submitted. A great many had, all of the changes representing improvements in the enforcement of the Covenant and other human rights instruments.

44. As to the question of whether individuals whose court cases had been decided in Luxembourg were satisfied with the decisions, he said naturally not all were, especially if they had lost a case. Yet, only one complaint had been brought before the European Court of Human Rights, and it had merely involved procedure, in that a judge had adopted a decision twice on the same case.

45. Concerning freedom of religion and the treatment of religious sects, he said that three religions were officially recognized in Luxembourg: Catholicism, Protestantism and Judaism. In recent years, and especially since the European Community had established institutions there, a number of other religions had come to be practised and their adherents were calling for them to be recognized as official religions. It should be noted, however, that the status of official religion entitled those who officiated at services to remuneration as employees of the State on the basis of a convention signed with the State. To be recognized as official religions, the other religions would have to take steps to have such a convention signed.

46. Concerning the question of how compensation was granted, he said the amount was set by the competent public authority, but if a claimant was dissatisfied with the decision, he could take the matter before the courts.

47. Mr. Wennergren had asked if an administrative decision could be appealed against and, if so, in which court. If an individual was dissatisfied with a decision adopted by an administrative court, he could submit the matter to the competent minister. The minister's decision could, in turn, be appealed against before the Council of State's litigation committee. All citizens, as well as foreigners, were well aware of their rights, as attested by the heavy caseloads of the administrative courts, whose decisions had to be handed down within 15 days of the date the case was heard.

48. He was not aware of any decision by a military court that had been raised in the press. As for the issue of conscientious objection, it did not arise, as military service was not obligatory but voluntary in Luxembourg.

49. Concerning the provision in article 11 (3) of the Constitution that the State guaranteed the natural rights of the individual and the family, he said he understood it to refer to the moral rights of the individual, which were the foundation for the principle of equity: all the elements required for protecting an individual's legal rights must be assured.

50. It had been asked, with reference to article 48 of the Constitution, if a court could interpret laws. Any modification of a law must be adopted as an amendment to the law. It was not for judges to interpret the laws.

51. In connection with difficulties encountered in implementing the Covenant, he said that when specific cases demonstrated a need for modification of domestic legislation, amendments making it clear how the legislation was to be interpreted so as to accord better with the Covenant were adopted.

52. Examples had been requested of cases in which the State's civil liability had been brought into play. There were 77 special laws, dealing with the environment, construction permits, etc., that could entail the civil liability of the State. One example of such a situation might be when a firm completed a construction project with full regard for security norms, but the State subsequently decided the norms were not sufficiently rigorous and accordingly closed down the project. The State would then be liable to the firm in an amount to be fixed by the ordinary courts.

53. He believed that the remaining questions posed by members of the Committee under section I of the list of issues covered subjects that had already been addressed in other contexts.

54. Mr. FODOR said his question on recent legislation appeared to have been misunderstood. What he had wished to ascertain was whether the legal provisions and amendments adopted since the consideration of the initial report could be considered to have been influenced by the dialogue between the Committee and Luxembourg during the consideration of the initial report.

55. Mr. THORN (Luxembourg) said the competent ministries had considered the reports of the Committee's proceedings, and the amendments to existing

legislation had been introduced as a consequence. Although the Committee's proceedings were given limited publicity, he intended to recommend that judicial bodies should be apprised of them as well.

56. The CHAIRMAN invited the delegation of Luxembourg to take up the questions contained in section II of the list of issues, which read:

"II. Treatment of prisoners and other detainees and right to a fair trial (articles 7, 9, 10 and 14)

(a) With reference to information contained in paragraph 10 of the report, please provide further details of the functions and activities of liaison officers who supervise places of detention.

(b) Please provide more details on guarantees provided for in the Acts of 16 June and 7 July 1989 to safeguard the interests of persons arrested.

(c) Are there any maximum limits on the length of pre-trial detention?

(d) Please provide further information on the implementation in practice of article 9, paragraph 3, of the Covenant.

(e) With reference to paragraph 21 of the report, please comment further on the activities of the official appointed in mental health establishments to inform and advise mentally-ill patients of their rights.

(f) Has the draft bill on the Protection of Youth already been adopted by the Chamber of Deputies? (See para. 22 of the report).

(g) Please provide further information on the procedure and criteria for selecting magistrates and appeal court judges."

57. Mr THORN (Luxembourg) noted that written replies would be given to all questions on the list of issues. He would also attempt to provide information orally.

58. In response to question (a), he said the public prosecutor, who was responsible for monitoring the situation in prisons, was assisted by a liaison officer, who was always a judge of the ordinary courts. Together, they monitored compliance with the internal regulations of penal institutions, including rules on the rights of prisoners and on the procedures to be followed in dealing with complaints. Complaints from prisoners were always heard by the public prosecutor.

59. On questions (b) and (c), the essential guarantee was that a person could not be held for more than 24 hours before being brought before the examining magistrate, who had to grant any request for pre-trial release unless there were good reasons for continuing to hold the detainee in custody. There was no maximum period of pre-trial detention as such, but the Code of Penal Procedure provided certain guarantees. On his arrest, the detained person was

advised of his rights to communicate with his family and any other person of his choice, to inform the public prosecutor and to choose counsel. The detainee's immediate release had to be ordered if the court had not taken a decision within one month of the initial interrogation. The detention could continue beyond that time only for strictly limited reasons, such as the danger of escape. The decision on pre-trial detention must in any event be taken within one month and one day.

60. With respect to question (d), anyone who had been a victim of unlawful arrest or detention had a right to compensation. An advisory committee was responsible for making recommendations as to the unlawfulness of the arrest and the amount of compensation that should be paid, taking account of such factors as the financial situation of the detainee, but it was the Minister of Justice who ultimately decided whether to grant or withhold compensation. A detainee who considered his rights to have been infringed could also bring his case before the ordinary courts.

61. On question (e), the Minister of Health appointed a medical officer for each establishment to whom patients could apply for advice and treatment.

62. With respect to question (f), the bill on the protection of youth had been adopted and the Act had entered into force on 10 August 1992.

63. On question (g), a distinction should be drawn between justices of the peace, appeal court judges, district judges and judges in the Court of Cassation or the Supreme Court. The Minister of Justice was responsible for appointing magistrates. In the case of a vacancy in the appeal courts, the General Assembly of Magistrates proposed to the Minister of Justice three candidates, one of whom had to be appointed by Grand Ducal decree. Most appointments were determined on the principle of seniority. Magistrates and judges were completely independent under the Constitution.

64. Mr. EL SHAFEI welcomed the delegation of Luxembourg and expressed appreciation for the written and oral replies it had provided. The second periodic report should be read in conjunction with the initial report of Luxembourg. More emphasis seemed to be placed on the compatibility of Luxembourg legislation with the European Convention on Human Rights and its protocols than with the Covenant. Although there was no conflict between the two, there were some points in the Covenant that were not covered by the European Convention. The report itself, and particularly the core document (HRI/CORE/1/Add.10), were extremely helpful, however, in showing how the Covenant and other human rights instruments were reflected in Luxembourg's constitutional and legal framework.

65. The Government of Luxembourg had made certain reservations and interpretative declarations in relation to a number of articles of the Covenant. A case in point was the interpretative declaration on article 10 with respect to the treatment of juveniles in detention. Article 10 (2) (b) stipulated that accused juvenile persons must be separated from adults and brought as speedily as possible for adjudication. He asked whether the interpretative declaration in that regard had been appropriately changed, or, if not, whether there was any intention of making such a change.

66. With respect to article 14 of the Covenant, it was stated in paragraph 63 of the initial report (CCPR/C/31/Add.2) that there were persons who were brought directly before a superior court or transferred to the Assize Court, thus preventing them from having their cases reviewed. That applied to certain persons, including certain judges, because of the offices they held, and also to persons judged by the Assize Court in the case of crimes. The paragraph went on to state that, consequently, article 14 (5) of the Covenant could not, as Luxembourg legislation stood, apply to persons who were brought directly before a higher tribunal or sent to the Assize Court; that a bill to reform the Assize Court system was in preparation; and that the introduction of a review procedure on the substance of such cases was envisaged. He asked whether any appropriate amendment had been made in that regard.

67. Referring to article 8 of the Covenant, and ILO Convention No. 29 concerning Forced Labour, he recalled that an ILO group of experts on the subject had requested the Government of Luxembourg to provide information on practical procedures with respect to work performed for the State and work performed for an outside employer by detainees. He would welcome any information to show what was being done to implement article 8 of the Covenant in that regard. He further wished to have some details of the safeguards referred to in paragraph 14 of the report in relation to article 7 of the Covenant. Were they compatible with General Assembly resolutions concerning the standard regulations to be followed and instructions to be given to the police authority in that respect?

68. Mrs. HIGGINS asked what had lain behind the Act of 9 January 1985 referred to in paragraph 8 of the report; was it merely part of a tidying-up operation or had there been some problems that had led up to it.

69. It was stated in paragraph 15 of the report that if the patient was incapable of appreciating the implications of the treatment, the doctor must submit the matter to a committee of three experts, two of whom must be doctors. Was not the family approached for consent on behalf of one of its members who was incapable of giving consent himself?

70. On question (d), she was still not entirely clear as to how the requirements of article 9 (3) and (4) were guaranteed. As she understood it, there was no pre-trial detention time-limit as such but the matter was regulated by various procedural guarantees. Article 9 (3) stipulated the dual requirement that the person concerned must be brought promptly before a judge or other officer authorized by law to exercise judicial power and that he must be entitled to trial within a reasonable time or to release. How soon must a person be brought before the judge? Was her understanding correct that although release would normally take place within a month, or the person would only be held in remand thereafter because of a danger of escape or some other strictly defined reason, there was no guarantee that he would be released if the trial did not take place within a reasonable time as required by article 9 (3).

71. Referring to the anxiety expressed by Amnesty International with respect to cases of isolation in a Luxembourg prison, she requested some more information concerning the isolation rules. She understood that isolation was ordered by the director of the prison, either as a disciplinary punishment or

as a measure against dangerous prisoners. What offences gave rise to isolation as a punishment, how were dangerous persons defined and for how long could prisoners be held in isolation? Was it the case that they were not only isolated from their fellow prisoners but were not allowed to talk to the guards? She had noted from the 1989 regulations that isolation also included a prohibition against reading literature. Why, and in what circumstances, was such a prohibition imposed? Lastly, was it regarded as satisfactory that prisoners were allowed only one hour's exercise per day out of their cell? How many people had been placed in isolation in 1992?

72. Mr. ANDO, referring to paragraph 15 of the report, noted that if the patient was incapable of appreciating the implications of the treatment, the doctor must submit the matter to a committee of three experts, two of whom must be doctors. Could the third expert be a lawyer? Similarly, could a lawyer be a member of the monitoring committee referred to in paragraph 19 of the report?

73. It was stated in paragraph 17 that in the light of the provisions relating to pre-trial detention contained in the Convention for the Protection of Human Rights and Fundamental Freedoms, the Luxembourg courts required such detention not to be disproportionate to the nature of the offence and the likely penalty. He would welcome some information on the way in which that requirement was applied in practice and on its compatibility with the principle of presumption of innocence. He associated himself with Mrs. Higgins' questions concerning the length of pre-trial detention.

74. He would like some further information about the content of the special educational measures referred to in paragraph 22 of the report. Did they include physical exercises?

75. He would also like further details about the interpretative declaration on article 10 (3) of the Covenant. Were juvenile offenders always segregated from adults?

76. Mr. DIMITRIJEVIC joined in welcoming the delegation of Luxembourg. He noted from paragraph 25 of the report that the Grand Ducal Regulation of 24 March 1989 regarding the administration and internal regime of prison establishments contained forceful measures designed to orient the prison system towards social rehabilitation. "Forceful" seemed a curious word to use in that context. Countries such as Luxembourg, which had no very serious human rights problems, nevertheless did have some problems, one of which was related to deprivation of liberty. What were the "forceful" measures referred to and what results had they produced? Information on the number of recidivists, the provision of post-custodial care and the parole system might be useful.

77. One of the scourges of developed societies which could threaten the right to life was drug abuse and drug trafficking. He wished to know whether that problem existed in Luxembourg, whether the prison population included drug abusers, how the necessary care was administered to such persons and whether there had been any discussion on measures to deal with the problem.

78. Mr. PRADO VALLEJO said that his most serious concern related to prolonged isolation, which appeared to be applied extensively in Luxembourg. He understood that it could last for several years, during which prisoners could be isolated for 23 hours a day, with only one hour for exercise outside the cell. That appeared to him to constitute inhuman treatment within the meaning of the Covenant.

79. He understood that drug users could spend a year in isolation, when what they needed was rehabilitation as sick people. Who decided when isolation should be applied - the director of the prison or some other authority? What remedies were available to detainees in that regard? Pre-trial detention, which was intended to prevent an accused person from escaping or otherwise impeding the trial proceedings, appeared to be quite common in Luxembourg. It was stated in paragraph 17 of the report that the Luxembourg courts required pre-trial detention not to be disproportionate to the nature of the offence and the likely penalty; but that was not its purpose, and he would like to have some further explanation.

The meeting rose at 1 p.m.